

House Bill 437

By: Representatives Martin of the 47<sup>th</sup>, Fludd of the 66<sup>th</sup>, and Royal of the 171<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to imposition and computation of income taxes, so as to provide for state income and  
3 financial institutions tax credits with respect to certain qualified low-income community  
4 investments and long-term debt securities; to define terms; to provide for allocation of credits  
5 by the Department of Economic Development; to provide for recapture; to provide for rules  
6 and regulations; to provide for related matters; to provide for an effective date and  
7 applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
11 imposition and computation of income taxes, is amended by adding a new Code section to  
12 read as follows:

13 "48-7-29.13.

14 (a) As used in this Code section, the term:

15 (1) 'Adjusted purchase price' means the product of:

16 (A) The amount paid to the issuer of a qualified equity investment for such qualified  
17 equity investment; and

18 (B) The following fraction:

19 (i) The numerator shall be the dollar amount of qualified low-income community  
20 investments held by the issuer in this state as of the credit allowance date during  
21 applicable tax year; and

22 (ii) The denominator shall be the total dollar amount of qualified low-income  
23 community investments held by the issuer as of the credit allowance date during the  
24 applicable tax year.

25 For purposes of calculating the amount of qualified low-income community  
26 investments held by an issuer, an investment shall be considered held by an issuer even

1 if the investment has been sold or repaid, provided that the issuer reinvests an amount  
2 equal to the capital returned to or recovered by the issuer from the original investment,  
3 exclusive of any profits realized, in another qualified low-income community  
4 investment within 12 months of the receipt of such capital. An issuer will not be  
5 required to reinvest capital returned from qualified low-income community investments  
6 after the sixth anniversary of the issuance of the qualified equity investment, the  
7 proceeds of which were used to make the qualified low-income community investment,  
8 and the qualified low-income community investment shall be considered held by the  
9 issuer through the seventh anniversary of the qualified equity investment's issuance.

10 (2) 'Applicable percentage' means 7 percent for each of the credit allowance dates.

11 (3) 'Credit allowance date,' with respect to any qualified equity investment, means:

12 (A) The date on which such investment is initially made; and

13 (B) Each of the six anniversary dates of such date thereafter.

14 (4) 'Long-term debt security' means any debt instrument issued by a qualified community  
15 development entity, at par value or a premium, with an original maturity date of at least  
16 seven years from the date of its issuance, with no acceleration of repayment,  
17 amortization, or prepayment features prior to its original maturity date, and with no  
18 distribution, payment, or interest features related to the profitability of the qualified  
19 community development entity or the performance of the qualified community  
20 development entity's investment portfolio. The foregoing shall in no way limit the  
21 holder's ability to accelerate payments on the debt instrument in situations where the  
22 issuer has defaulted on covenants designed to ensure compliance with this Code section  
23 or Section 45D of the Internal Revenue Code of 1986, as amended.

24 (5) 'Qualified active low-income community business' has the meaning given such term  
25 in Section 45D of the Internal Revenue Code of 1986, as amended, provided that any  
26 business that derives or projects to derive 15 percent or more of its annual revenue from  
27 the rental or sale of real estate shall not be considered to be a qualified active low-income  
28 community business.

29 (6) 'Qualified community development entity' has the meaning given such term in  
30 Section 45D of the Internal Revenue Code of 1986, as amended, provided that such entity  
31 has entered into an allocation agreement with the Community Development Financial  
32 Institutions Fund of the United States Treasury Department with respect to credits  
33 authorized by Section 45D of the Internal Revenue Code of 1986, as amended.

34 (7) 'Qualified equity investment' means any equity investment in, or long-term debt  
35 security issued by, a qualified community development entity that:

36 (A) Is acquired after January 1, 2008, at its original issuance solely in exchange for  
37 cash;

(B) Has at least 85 percent of its cash purchase price used by the issuer to make qualified low-income community investments; and

(C) Is designated by the issuer as a qualified equity investment pursuant to the provisions of this Code section, regardless of whether it also has been designated as a qualified equity investment under Section 45D of the Internal Revenue Code of 1986, as amended.

This term shall include any qualified equity investment that does not meet the provisions of subparagraph (A) of this paragraph if such investment was a qualified equity investment in the hands of a prior holder.

(8) 'Qualified low-income community investment' means any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, on a collective basis with all of its affiliates, the maximum amount of investment that any qualified community development entity, on an aggregate basis with all of its affiliates, may use for the calculation of any numerator described in division (a)(1)(B)(i) of this Code section shall be \$10 million.

(9) 'Tax credit' means a credit against the tax otherwise due under this chapter, excluding withholding tax or the tax imposed in Article 4 of Chapter 6 of this title.

(10) 'Taxpayer' means any individual or entity subject to the tax imposed in this chapter, excluding withholding tax or the tax imposed in Article 4 of Chapter 6 of this title.

(b) A taxpayer that holds a qualified equity investment on a credit allowance date of such qualified equity investment shall be entitled to a tax credit during the taxable year including such credit allowance date. The tax credit amount shall be equal to the applicable percentage of the adjusted purchase price paid to the issuer of such qualified equity investment. The amount of the tax credit that may be redeemed in any tax year shall not exceed the amount of the taxpayer's state tax liability for such tax year. No tax credit authorized under this Code section shall be refundable or transferable. Tax credits earned by a partnership, limited liability company, Subchapter 'S' corporation, or other 'pass-through' entity may be allocated to the partners, members, or shareholders of such entity for their direct redemption in accordance with the provisions of any agreement among such partners, members, or shareholders. Any amount of tax credit that the taxpayer is prohibited by this Code section from redeeming in a taxable year may be carried forward to any of the taxpayer's subsequent taxable years. The amount of tax credits that may be allocated by the Department of Economic Development under this Code section in each fiscal year shall not exceed \$20 million.

(c) The issuer of the qualified equity investment shall certify to the Department of Economic Development the anticipated dollar amount of such investments to be made in

1 this state during the first 12 month period following the initial credit allowance date. If on  
2 the second credit allowance date, the actual dollar amount of such investments is different  
3 from the amount estimated, the Department of Economic Development shall adjust the  
4 credits arising on the second allowance date to account for such difference.

5 (d) The Department of Economic Development shall recapture the tax credit allowed under  
6 this Code section with respect to such qualified equity investment under this Code section  
7 if:

8 (1) Any amount of the federal tax credit available with respect to a qualified equity  
9 investment that is eligible for a tax credit under this Code section is recaptured under  
10 Section 45D of the Internal Revenue Code of 1986, as amended; or

11 (2) The issuer redeems or makes any principal repayment with respect to a qualified  
12 equity investment prior to the seventh anniversary of the issuance of such qualified equity  
13 investment.

14 Any tax credit that is subject to recapture shall be recaptured from the taxpayer that  
15 claimed the tax credit on a return.

16 (e) The Department of Economic Development shall promulgate rules to implement the  
17 provisions of this Code section, including recapture provisions on a scaled proportional  
18 basis and to administer the allocation of tax credits issued for qualified equity investments  
19 which shall be conducted on a first-come, first-serve basis."

## 20 **SECTION 2.**

21 This Act shall become effective January 1, 2008, and shall apply with respect to taxable  
22 years beginning on or after that date.

## 23 **SECTION 3.**

24 All laws and parts of laws in conflict with this Act are repealed.